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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,028	03/02/2004	Jay S. Walker	03-018	1255
22927 7590 11/10/2009 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905				
EXAMINER				
D AGOSTINO, PAUL ANTHONY				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
11/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,028

Applicant(s)

WALKER ET AL.

Examiner

Paul A. D'Agostino

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 15, 33 and 35-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 15, 33 and 35-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: ____.

DETAILED ACTION

This responds to Applicant's Arguments/remarks filed 05/26/2009. Claims 1-8, 15, 33, and 35-41 have been amended. Claim 34 is newly cancelled and Claims 9-14 and 16-32 stand cancelled. Claims 1-8, 15, 33, and 35-43 are now pending in this application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Pub. No. 2002/0073021 to Ginsberg et al. (Ginsberg).

In Reference to Claims 1 and 33

Ginsberg discloses a gaming apparatus (Fig. 1 and "data processing computer and a plurality of client workstations are provided that communicate interactively via a network" [0020]), in which a player can establish an interactive transaction confirmation (col. [0021]) wherein client and system may create "criteria" ([0062]) of which notifications 'warn' the client from wagering further [0062]), the system comprising:

a processor operable to facilitate a wagering game (Fig. 1 "House Wagering Processor" 102); and

a computer readable medium in communication with the processor and storing instructions configured to direct the processor to perform a method comprising ("Wagering processor 102 can be, for example, a data processing computer having appropriate processing speed and memory capacity" [0029] storing client qualification process 200 of Figs. 2-9):

determining a balance of funds for a player (Fig. 3 step 302, [0067]);

determining a wager amount {determining a cost to play} selected for placement on the wagering game by the player {receiving a request to initiate play of a wagering game} (Fig. 3 steps 304-312);

determining whether the wager amount {cost to play} selected is greater than a predetermined amount {determining whether to present confirmation information to a player} , wherein the predetermined amount is distinct from a minimum wager amount that may be required to play the game ("the system preferably presents to a client only those events whose minimum wagering amounts are within the client's authorized credit." [0034] wherein, for example, if a player has a \$100 credit limit (pre-determined amount) he is able to wager (wager amount) on events and their minimum wager amount (minimum wager amount) on "which the client has sufficient authorized credit to wager" [0034] (comparison of the predetermined amount to the wager amount which is distinct from the minimum wager amount of each event);

if the wager amount selected is not greater than the predetermined amount, accepting the wager amount {decrement a credit balance} ("As the client places wagers, the system not only updates the client's credit in real time, but also updates the list of events of which the client has sufficient authorized credit to wager" [0034, 0036];

if the wager amount selected is greater than the predetermined amount, {determining confirmation information and} displaying {presenting} a confirmation message such that the wager amount selected is not accepted until at least the confirmation message is displayed ("The system preferably automatically helps clients control risk. ... If the criteria is met during wagering, the system can warn or prevent the client from wagering further." [0062]; thus, a player will receive a warning {confirmation} that the wager exceeds the predetermined credit limit in which instance the player can take appropriate action so that the wager amount is accepted after the confirmation. In light of Applicant's Specification, the function of the confirmation is to "double-check" information before committing (Specification [0108]) versus a confirmation which serves as a receipt or proof of purchase. The invention of Ginsberg allows a player to check that he has sufficient funds before the system tells him he has insufficient funds when it compares the wager to the predetermined credit limit. In this regard, the player can take appropriate action based on the information to prevent the client from wagering further [Claim 41 and Claim 46]), and

{initiate play of the game by displaying the list of events [0038-0040] and settles each wager after an outcome is announced [0065]}.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2-8, 15, and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginsberg in view of U.S. Patent No. 6,077,163 to Walker (Walker) of record.

In Reference to Claims 2-6

Ginsberg discloses a system substantially equivalent to Applicant's claimed invention. However, Ginsberg is silent on a plurality of plays in a game; a flat rate session; a pre-paid session; a wager amount corresponding to a plurality of plays; and a wager amount corresponding to a predetermined period of time.

Walker discloses a gaming machine (Fig. 1 and process Figs. 8A-13) wherein the game comprises a plurality of plays in a game (Fig. 14 for "Package Number 1" there are "100 Pulls" {multiple plays}), a flat rate session (Fig. 5 "Flat Rate Price" 514); a prepaid session (Fig. 8B step 834); a wager amount corresponding to a plurality of plays (Fig. 14 "duration of Flat Pay Session" 1414 "100 Pills" corresponding to \$30); and a wager amount corresponding to a predetermined period of time (Fig. 5 "72 Minutes" corresponding to \$50). Walker discloses this system to provide players more convenient and efficient game play (Col. 1 Lines 18-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to introduce a flat pay, a prepay, a multiple play, or a plays over time features as taught by Walker into the multiple event selection of Ginsberg to allow players a more convenient and efficient play experience by not having to wager on an event by event basis.

In Reference to Claims 7 and 8

Ginsberg discloses a confirmation screen with at least one selectable location (Ginsberg discloses a that the player is warned ([0062]) implicitly teaching that the

player is allowed to make a selection {sending a signal confirming confirmation message} to proceed, reduce, or cancel the wager. The system checks for this selection as part of Fig. 3 step 314 "Confirm Wager and Adjust Credit Balance". However, if Applicant does not agree with Examiner's argument, then Applicant is directed to Walker.

Walker explicitly discloses displaying a message to a player (Fig. 10 step 1014) in order to "verify termination of the flat rate session" (Col. 13 Lines 10-15) which requires a selection to be made "or the session continues" (Col. 13 Lines 12-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the display of a verification of termination as taught by Walker into the teachings of Ginsberg to enable the player to input a decision after having received a wager warning.

In Reference to Claims 15 and 35-40

See rejection of Claims 1 and 8. Further, Ginsberg discloses the confirmation includes an indication of the cost to play the game as a percentage of an available balance. Ginsberg teaches that the warning criteria can be expressed as a percentage {ratio} of the wager relative to the credit balance. e.g., "when the client loses 50% of his credit in 1 hour" ([0062]). While the example discloses a scenario of the warning signifying a ratio of pat loses of 50% of a player's credit, Examiner reasonably believes that "The house, a client, or both can enter instructions (e.g., criteria) into the system defining, for example, when too much has been wagered or lost" [0062] also indicates

performance of generating a warning resulting from a current wager which is, for example, a large percentage, e.g., 50%, of one's credit balance. Reading Ginsberg [0062] as a whole, Examiner reasonably interprets Ginsberg to allow customized criteria [0062] and customized display [0035] to deliver a warning which checks if a player is aware and desires to proceed with an authorized bet that is half of the player's authorized credit as part of the interactive transaction process [0021] wherein "As the client places wagers, the system not only automatically updates the client's credit in real time, but also updates the displayed list of events on which the client has sufficient authorized credit to wager" [0034]. In this dynamic fluid environment, it is possible for a player to lose track of their running credit balance and so for a given wager would want to know and be warned that a wager is about to consume a large proportion of their remaining credit.

Alternatively, Ginsberg updates the client's credit in real time [0034] and displays a list of those wagers upon which the player has sufficient credit to wager. However, Ginsberg does not disclose presenting the wager as a percentage {ratio} of the available credit. It would have been an obvious matter of design choice to express the wager as a percentage {ratio}, since Applicant has not disclosed that this manner of presentation solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any manner of data transformation as long as the player, upon immediate visual inspection of the data elements, can assess the gravity of (consequences of) the wager relative to his available balance. For

example, the player would know from the list (as it shrinks or grows) and from the range of eligible wager amounts (costs to play) displayed what the wager consequences are relative to the available credit balance at the time of the wager.

7. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betmaker.com of record.

Betmaker.com discloses on-line bet making which implicitly discloses a processor and program in order to function. A balance of funds is established for a player (See Betmaker.com, "FAQ player accounts") and the player makes wagers (See Betmaker.com Examples I & II under Buy Wagering). Upon seeing the confirmation page communicating "Match" "Play" "Buy" "Moneyline" the player is given a chance to review the wager, cost, and risk, and "back-out" by selecting the dropdown box revealing the "No Buy" selection.(See Betmaker.com, Page 1)

In Betmaker, minimum wager amounts required (See Betmaker.com "about Betmaker"). The system determines whether the wager amount is greater than this predetermined amount. For example, the system will not accept bets less than the minimum bet and will only accept bets greater than zero (or \$6 for in Internet bet or \$50 for a phone bet) which are predetermined amounts of which the computer system checks to make sure the bet is valid (See Betmaker.com "FAQ"). When a bet is greater than a predetermined limit a confirmation message is displayed (See Betmaker.com "Buy- wagering"). Betmaker.com also discloses that when a player makes a wager, the display reads the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). However the wager amount

to the credit balance is not expressed as a ratio {ratio is not less than one half} in the confirmation message.

At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to display the same information as a ratio since because Applicant has not disclosed that the display of a ratio or the comparison of ratios to trigger a confirmation message provides an advantage, is used for a particular purpose, or solves a stated problem. Conversely, the system of Betmaker.com performs equally as well comparing totals to determine a confirmation and with the total information displayed on the screens, the player, upon visual inspection, can determined the relative proportion of the bet to what he has left rather easily from the information on the confirmation page and therefore, it would have been an obvious matter of design choice to modify Betmaker.com to obtain the invention as claimed.

It is further noted that to have the predetermined ratio be not less than one half would also have been obvious to a person of ordinary skill in the art. By displaying a confirmation message only when a player is betting a significant portion of their available balance ensures that the person actually knows the potential risk of the bet before they place the bet. By making it visible to players how much they are actually wagering, they may reconsider the bet and want to withdraw of modify it so they can extend their play by better rationing their available credit.

Response to Arguments

8. Applicant's arguments (see Applicant's Arguments/Remarks pages 7-8) with respect to Claims 1-8, 15, 33, and 35-40 have been considered but are moot in view of the new ground(s) of rejection. Applicant has amended to recite a predetermined limit distinct from a wager minimum. Consequently, Applicant is directed to Ginsberg.

9. Applicant's arguments filed 05/26/2009 with respect to Claim 41 have been fully considered but they are not persuasive. Applicant argues that that it would not be obvious to display a confirmation message wherein a ratio is greater than a predetermined limit. Examiner respectfully disagrees and has amplified his reasoning as part of the rejection of the claims. Applicant argues further that Betmaker.com is only concerned with helping players place bets efficiently; is unconcerned with the player's well being; puts the onus completely on the player to take responsibility for their bets; and that there are no triggers for the confirmation page described and no substantial evidence that such a modification as proposed by Examiner would have been obvious. Lastly, that Examiner has used impermissible hindsight reasoning. Examiner respectfully disagrees and finds Applicant's characterization of Betmaker.com off target. Betmaker shows {triggers} confirmation pages (which largely serve as confirmations of a final transactions but at the same time afford the player the opportunity to change or modify their bet. As with on-line activities, players, shoppers whatever, place wagers, load shopping carts, and the like and then really (seriously) assess the true impact (total cost, risk, price) at least one final time before finally commit to a purchase. Betmaker.com utilizes this same mental model as part of their design by

allowing for the player upon final reflection to "back-out" of a wager by selecting the "No Buy" option on the confirmation page. As to the balance of Applicant's points, Examiner finds Applicant's points that Betmaker.com's lack of concern for a player's well-being simply because Betmaker makes clear that the onus is on the player to be responsible for the bets they place a spurious argument and misdirected away from the structural workings of Betmaker.com. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Thus, the rejection of Claim 41 is maintained.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided in the Notice of References Cited.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. D'Agostino whose telephone number is (571)270-1992. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 5:00 p.m..

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/
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Examiner, Art Unit 3714